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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LUIS MIGUEL ARANDA-AGUILAR, Defendant and Appellant.	A133508 (Sonoma County Super. Ct. No. SCR-580508)

Counsel appointed for Luis Miguel Aranda-Aguilar has asked this court to independently examine the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436, to determine if there are any arguable issues that require briefing. Counsel advises that defendant was apprised of his right to file a supplemental brief, but has not elected to exercise that right.

We have concluded our review, conclude there are no arguable issues, and affirm the judgment without requiring further briefing.

BACKGROUND

On March 26, 2010, defendant was housed in the mental health module at Sonoma County's main adult detention facility. Deputies heard loud noises coming from defendant's cell. Upon investigating they discovered defendant had broken his porcelain toilet into shards and was attempting to commit suicide. He had cut his wrist and had begun to cut his throat. He refused to listen to the officers when they told him to drop the porcelain shard, so a Specialized Emergency Response Team (SERT) was called in.

Deputies Wolfe and Medeiros were among five or six officers who entered defendant's cell as part of the SERT team. Defendant attempted to jump on those two SERT officers and to stab them, but he was deflected away and controlled without incident. No deputies were injured.

Defendant was then taken to the Santa Rosa Memorial Hospital emergency room to be treated for his self-inflicted wounds. During treatment defendant jumped off the gurney and struck two respiratory therapists, cornering a female therapist and placing her in a rear choke hold. He was subdued with a Taser.

As a result of these events, on April 1, 2010, defendant was charged with five offenses: defacing Sonoma County property, a felony (Pen. Code, § 594, subd. (a)); two felony counts of assault with a deadly weapon and by means of force likely to produce great bodily injury against Custodial Officers Wolfe and Medeiros (§ 245.3);[1] one felony count of assault by means of force likely to produce great bodily injury against one respiratory therapist (§ 245, subd. (a)(1)); and use of force and violence against the other respiratory therapist, a misdemeanor (§ 242). The two crimes involving the custodial officers were alleged to be serious felonies under section 1192.7, subd. (c)(23). Defendant initially entered not guilty pleas and denials of the special allegations.

On April 15, 2010, the court expressed a doubt as to defendant's competency to stand trial and suspended proceedings under section 1368. On May 27, 2010, after receiving a report from the doctor appointed to examine him, defendant was determined to be competent, and criminal proceedings were reinstated.

On July 22, 2010, defendant entered pleas of not guilty and not guilty by reason of insanity. Two doctors were appointed pursuant to section 1026. Their reports were received by the court on August 5 and 11, 2010.

On September 15, 2010, defendant changed his plea to guilty on one count of violating section 245.3 and one count of aggravated assault (§ 245, subd. (a)(1)), giving

[1] Undesignated statutory references are to the Penal Code.

up his right to a preliminary hearing. The People had agreed to dismiss the other charges, and the court indicated it would sentence defendant to one year in county jail.

However, when the case came on for sentencing, the judge rejected the plea agreement due to information contained in victim impact statements in the probation report. Specifically, Deputy Wolfe said he reflected upon the incident "almost daily" and "[i]f there is a hell I want him to go to it." Wolfe wanted defendant to get the "maximum prison sanction allowed by law." Deputy Medeiros said the incident had been "traumatic" and defendant "should not be allowed to 'walk the streets.' " He asked that defendant receive a prison sentence. One of the respiratory therapists said she "feared for her life" at the time of the attack and that defendant "should be put away if he is crazy." The other respiratory therapist said he had been "affected" by the attack and was "bothered" for at least a month. One therapist said defendant had a "stone-cold look" on his face and the other said he "acted like a wild animal" during the attack.

On October 21, 2010, the court indicated it had not previously had a "good appreciation of . . . the impact on the correctional officers and . . . . the severity of the attack . . . ." It therefore elected not to go forward with the indicated sentence but rather allowed defendant to withdraw his plea. Defendant entered a not guilty plea on November 24, 2010.

On June 2, 2011, defendant again withdrew his not guilty pleas and, with the understanding that the court would sentence him to no more than four years in state prison, entered pleas of no contest to all charges.

On August 11, 2011, defendant was sentenced to an aggregate term of four years, computed as follows: four years on counts two and three (§ 245.3) to run concurrently, two years on the vandalism count, stayed pursuant to section 654, three years on count four (§ 245, subd. (a)(1)), to run concurrently. He was not sentenced on count five.

Defendant was granted 504 days of actual custody credit and 75 days of conduct credit under sections 4019 and 2933.1, for a total of 579 days. According to defendant's

brief, upon subsequent request he was granted 756 days of credit.[2] A restitution fine of $500 was imposed, as was a parole revocation fine of $500, stayed pending completion of parole. Actual restitution of $552 was ordered, although the abstract reflects restitution of only $55.10.

A notice of appeal was filed October 17, 2011, having been given to a correctional officer for mailing on October 8, 2011. The notice of appeal included a request for certificate of probable cause, which was granted. Defendant challenged the validity of the plea, claiming he had not been afforded effective assistance of counsel in that his retained attorney did not provide him with copies of the police reports or other evidence and did not visit him in jail. He said his attorney had told him he was facing a life sentence, which "forced [him] to take the No contest plea." He further alleged that he was suffering from hallucinations when he committed his offenses, which had not been explained properly to the court, as the symptoms were caused by a shooting in the head several years earlier.

DISCUSSION

Defendant was represented by counsel throughout the proceedings. His request for a certificate of probable cause says that his attorney told him he was facing a life sentence. However, a signed waiver form in the record (in Spanish) shows that he was informed the maximum sentence was eight years, and he received the same advice orally in court. Normally a claim of ineffective assistance of counsel must be raised by petition for writ of habeas corpus. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) Nothing in the appellate record suggests defendant's counsel was ineffective. Therefore, if he wishes to raise this issue he must do so on habeas corpus. (*Ibid*.)

We detect no improprieties with respect to the proceedings under sections 1368 or 1026. Defendant's claim that he was suffering from hallucinations at the time of the incident was reported to the court at sentencing. Whatever symptoms he was experiencing appear to have been substance-induced. (§ 25.5.) Defendant's notice of

[2] There is no abstract of judgment in the record reflecting this change.

appeal appears to claim his hallucinations were caused by earlier being shot in the head by members of a Mexican gang. The shooting was mentioned in at least one of the doctor's reports prepared under section 1026 and in the probation report. A claim regarding causation of psychological symptoms several years later is not cognizable on appeal on this record.

The record, curiously, is ambiguous with respect to the identity of the sentencing judge. On March 21, 2011, Judge Gary Medvigy was successfully challenged under Code of Civil Procedure section 170.6. Yet the sentencing transcript from August 11, 2011, shows that Judge Medvigy was the sentencing judge. The abstract of judgment, on the other hand, shows that Judge Julie Conger sentenced defendant. Judge Conger signed the sentencing orders. Counsel gave no indication at sentencing that he objected to the sentencing judge. We see no issue to be raised on appeal.

Custody credits, which appear to have been calculated improperly in the first instance, were corrected at defense request. Defendant's appellate counsel apparently filed a brief in this court requesting additional credits, but he later moved to strike the brief and substitute a *Wende* brief because the issue he had raised had been "render[ed] moot" in light of the Supreme Court's ruling in *People v. Brown* (2012) 54 Cal.4th 314. That motion was granted on July 10, 2012.

Based on our review of the record, we see no additional issues that merit briefing. To the extent there was an error in the abstract with respect to the amount of restitution, we note the court reserved jurisdiction to modify the amount of restitution. We trust that the error has been or will be corrected without our intervention.

DISPOSITION

The judgment is affirmed.

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Richman, J.

We concur:

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Haerle, Acting P.J.

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Lambden, J.